



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

FEB 11 1998

REPLY TO
ATTN. OF: OW-134

Mr. Tom Fitzsimmons, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Fitzsimmons:

The Environmental Protection Agency (EPA) has completed its review of the Washington Water Quality Standards (WQS) regulations at Chapter 173-201A WAC that were adopted on November 18, 1997 and became effective on December 19, 1997. These revised WQS were submitted to the EPA for approval on December 5, 1997 and received by the EPA on December 9, 1997.

The substantive changes to these revised WQS regulations are found in the following areas: Definitions -- additional terms and minor clarifications; General water use and criteria classes -- minor wording changes for clarification; establishing lake nutrient criteria; toxic substances criteria; General considerations -- fresh/salt water boundaries, fish passage, total dissolved gas, wetlands; Short-term modifications; Specific classifications, Freshwater -- error corrections and clarifications. The Department of Ecology (Ecology) has advised the EPA of a typographical error resulting in the transposition of acute and chronic criteria values in footnote "mm." (WAC 173-201A-040). Ecology has advised the EPA that the error will be corrected.

The EPA has reviewed the new and revised elements of the November 1997 WQS regulations pursuant to Section 303(c) of the Clean Water Act (CWA) and the implementing regulations at 40 CFR Part 131. This letter constitutes our formal notification of the results of this review. The EPA approves all of the new and revised elements in Washington's November 1997 WQS.

The EPA approval of Washington WQS is considered a federal action and the EPA must comply with the Section 7 consultation requirements of the Endangered Species Act (ESA). Section 7 states that "all federal agencies shall utilize their authorities on furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species" and "each federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species."

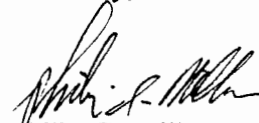


The EPA has initiated discussions with the Fish and Wildlife Service and the National Marine Fisheries Service about the need for informal or formal consultation on the EPA's approval action. We will include this approval action in our ongoing consultation efforts to identify any potential effects to endangered or threatened species from the new and revised WQS regulations. It is possible that the outcome of the ESA consultation may necessitate our reconsideration of this approval action.

In accordance with Section 303(c) of the CWA and the implementing regulations at 40 CFR Part 131, the EPA approves all of the new and revised elements in WAC 173-201A, the Surface Water Quality Standards.

If you have any questions concerning this letter please contact Fletcher G. Shives, Water Quality Standards Coordinator for Washington at (206) 553-8512.

Sincerely,



Philip G. Millam
Director
Office of Water

cc: Dave Peeler, DOE
Steve Saunders, DOE
Eric Schlorff, DOE
Jacqueline Wyland, NMFS
Denise Baker, FWS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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1200 Sixth Avenue
Seattle, Washington 98101

MEMORANDUM

Subject: Rationale for Approval of Washington Water Quality Standards
(Chapter 173-201A WAC), November 18, 1997

From: Fletcher G. Shives *Fletcher G. Shives*

To: File

The EPA Water Quality Standards (WQS) regulations direct states, at least once every three years, to hold public hearings for the purpose of reviewing applicable WQS and, as appropriate, to modify and adopt standards (triennial review) [40 CFR 131.20 (a)]. Washington initiated this triennial review in 1994 and completed it when revised WQS were adopted on November 18, 1997. These revised WQS became effective on December 19, 1997.

Washington conducted a public scoping of the issues to be considered in the WQS review in 1994. Ecology also worked with advisory committees from 1994 to 1996. The EPA participated in that process. The EPA Water Quality Standards Coordinator for Washington maintained a continuing dialogue with the Washington Department of Ecology (Ecology) and others.

The EPA provided official written comments on the proposed revisions to the WQS by letter dated July 18, 1997. The EPA comments, and those of other agencies, organizations, and individuals, are well and thoroughly addressed by Ecology in the *Concise Explanatory Statement (Responsiveness Summary) for Adoption of Chapter 173-201A WAC, Water Quality Standards for the State of Washington* (November 1997).

Definitions - WAC 173-201A-020

A number of definitions are modified for clarity or added to the regulations. The changes for clarity and ease of understanding are of a minor and inconsequential nature. The newly added definitions are consistent with EPA guidance and regulations. They are appropriate to assure the application of WQS to all waters of the state and for the protection of beneficial uses. These changes satisfy the provisions of 40 CFR §§131.2 and 131.3.

General water use and criteria classes - WAC 173-201A-030

This section of the revised 1997 Washington WQS includes the addition of lake nutrient narrative standards. The EPA believes that using an ecoregional approach to setting numeric criteria is a useful way to address the natural differences in lake water quality potential within the state. The lake nutrient standard provides for the protection of existing high quality lake waters and allows for addressing lakes that have been degraded over time through a lake-specific study, initiated by either Ecology or another entity.

The nutrient table values are not necessarily set to the upper limit of the range but rather can be set within the range as appropriate. Importantly, the range of values are not criteria *per se* but rather values used to establish levels for concern from which criteria can be established in the standards.

Ponds entirely surrounded by private property and owned by a single landowner will continue to have criteria based on impairment of uses by nutrients but it will be up to the landowners to bring the impairments to the attention of Ecology.

Antidegradation must be considered before the water can be degraded. The lake nutrient criteria are in keeping with the EPA nutrient strategy.

These provisions satisfy the requirements of 40 CFR §§131.11 and 131.12.

Toxic substances - WAC 173-201A-040

The EPA participated extensively with Ecology and the petitioner, Western States Petroleum Association, in design of the toxicity testing that was done to support the cyanide criterion change. The approach used was a "substitution process," which was a variation of the "recalculation procedure." In this process, data were acquired for all other species in the *Cancer* genus found in Puget Sound so the values for the east coast yellow crab, *Cancer irroratus*, could be deleted and the criterion recalculated. Because no genus was added or subtracted from the national database, and all species in this genus in Puget Sound were tested, this substitution was authorized by the developers of the EPA's aquatic life criteria methodology. The EPA reviewed the test methodology and the resulting data and agrees with the calculated criterion.

The new proposed conversion factors for metals replace factors adopted by Ecology based on a preliminary set of factors released by EPA in October 1992. The new factors are based on a more extensive data base and were promulgated in the revisions to 40 CFR 131, published in the Federal Register on May 4, 1995. The procedures for translating dissolved metals criteria so that total recoverable effluent limits can be calculated, are available in the Ecology *Permit Writer's Manual*.

The revised marine copper criterion represents the most current science [60 FR 22233]. The revised ammonia criterion reflects the adopted change in the federal criterion.

Ecology has advised the EPA of the typographical error at WAC 173-201A-040(3)(mm) causing the transposition of the acute and chronic criteria numbers for cyanide. The EPA understands that this error will be corrected.

These provisions satisfy the requirements of 40 CFR 131.11.

General considerations - WAC 173-201A-060

The changes for establishing numeric criteria in brackish waters based on vertically averaged salinity are reasonable and appropriate to distinguish between freshwater and marine water criteria.

The special fish passage exemption for sections of the Snake and Columbia Rivers is intended to aid in the restoration of salmonid species. The EPA and the state have asked the Bureau of Reclamation and the Corps of Engineers to bring their operations into compliance with WQS.

The addition of language addressing wetlands is in keeping with the EPA's guidance to bring all "waters of the United States" under the full applicability of standards, as "waters of the state." Where the state definition may be somewhat limited, those areas falling under the federal definition of wetlands will still be regulated as such within Section 404 of the Clean Water Act (CWA).

These provisions satisfy the requirements of 40 CFR 131.13.

Short-term modifications - WAC 173-201A-110

The short term turbidity modifications for construction activities are in keeping with the provisions of EPA guidance as found in the *Water Quality Standards Handbook* (Chapter 5).

The short term modifications conform to the provisions of 40 CFR 131.13.

Specific classifications - Freshwater - WAC 173-201A-130
Implementation - WAC 173-201A-160

The changes to these chapters are for clarity, consistency, or correction and are considered inconsequential.

Finally, the EPA entered into discussions with both the US Fish and Wildlife Service and the National Marine Fisheries Service regarding the standards revisions pursuant to Section 7 of the Endangered Species Act. Ecology has been advised that the EPA may modify its approval of the standards based on the result of that consultation.

The EPA has determined that Washington's standards revision submittal and review process meet the requirements of 40 CFR §§131.6 and 131.20 and approves of the revisions.



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1200 Sixth Avenue
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APR 16 2002

Reply To
Attn Of: OW-131

Susan Braley, Unit Supervisor
Water Quality Management Unit
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Susan,

This letter is to let you know the status of the biological assessment (BA) for Endangered Species Act (ESA) consultation that EPA is developing for a portion of the triennial review that was completed by Ecology in November 1997. The changes to the State's standards adopted in November 1997 were approved by EPA in February 1998, with the proviso that EPA still needs to complete ESA consultation, and the result of that consultation could be a need to reconsider our approval action.

The consultation at this time is focusing solely on the changes to the marine copper and marine cyanide criteria that Washington adopted in 1997. Although there were also new criteria for lake nutrients, changes to the short-term modification provisions, an exemption for the total dissolved gas criteria for fish passage at the dams, changes to the ammonia criteria, updated conversion factors for dissolved metals criteria, wetlands definitions, and other technical changes, we are giving priority to completing the consultations for marine cyanide and marine copper. Our reasoning is that we have been instructed by EPA Headquarters that consultation is necessary before we can remove Washington from the National Toxics Rule for those two parameters and therefore before those new state criteria can be used in permits. We recognize this is a priority and realize it will be faster to consult on the copper and cyanide criteria only at this point, rather than consult on all the changes.

As you are probably aware, we have several major consultations underway and more in the queue. Our strategy to deal with this has been to prioritize our standards actions, focusing first on standards consultations for toxic criteria in Idaho and conventional parameters in Oregon. With these "foundation" consultations in place we then hoped to streamline the consultations for the other states and tribes. While we have concluded the Oregon consultation, we are still awaiting Biological Opinions from the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the "Services") for the toxic criteria consultation in Idaho. Hence we have held off initiating further consultation on toxics in Washington, other than these marine criteria, until we have the Idaho results. Once the Idaho consultation is completed we will be reassessing our priorities for completing other consultations.



You may be interested to know how this consultation relates to the national criteria consultations that EPA Headquarters is beginning with the Services. Those consultations will not address site-specific criteria derivations (e.g. Washington's marine cyanide criteria) so it appears better to continue our regional process on the copper and cyanide criteria.

The consultation document for marine copper and cyanide is being done by a part-time student co-op that EPA hired last summer. She requested species lists from the Services in June 2001 and received responses from them in July. She hopes to have a completed draft document by the end of this month to share with you and the Services. Her work has been delayed somewhat because of a lack of information in certain areas, but we're close to having a draft that can be reviewed.

I regret how long this consultation is taking and not providing a more regular update on our process. We had communicated both with your staff and the Services in September 2001 (enclosed) that this project was underway, but held off further communication pending having a document to share. At this point I anticipate that we can shortly provide a draft BA for review and engage in discussions jointly with the Services to address their concerns.

Please feel free to call me, or Marcia Lagerloef at (206) 553-0176, if you have any further questions about the status of our consultation.

Sincerely,



Paula vanHaagen, Manager
Standards and Planning Unit

Enclosure

cc: Rachel Friedman, NMFS
Denise Baker, FWS
Cheryl Niemi, Ecology



Marcia Lagerloef

09/06/2001 04:13 PM

To: rachel.friedman@noaa.gov, denise_baker@fws.gov

cc: mhic461@ecy.wa.gov, Roopa Karia/R10/USEPA/US@EPA, Paula VanHaagen/R10/USEPA/US@EPA

Subject: A heads up that we'll be consulting on part of the WA 1997 triennial review

We were able to hire a COOP student, Roopa Karia, this summer, and set her on the task of developing the BE or BA for our consultation with you on the marine copper and marine cyanide criteria in Washington's last triennial review revision (1997). I culled out that chunk to make it a manageable project for her and to address the portion of the standards that Ecology can't implement without our removing them from their inclusion under the National Toxics Rule. The National Toxics Rule was promulgated by EPA in 1992 to put in place numeric toxic criteria where states were missing those criteria, as required by Section 303(c)(2)(B) of the Clean Water Act. In Washington's case, they were missing chronic marine cyanide and copper, among other things (mostly human health criteria). To withdraw Washington from the National Toxics Rule for these two parameters requires that we not only take our 303(c) wqs approval action (which we did in 1998), but also do ESA consultation, and then provide a notice in the FR taking comment on whether these two criteria, which are less stringent than the applicable National Toxics Rule criteria, are acceptable to allow us to withdraw Washington from the federal rules.

Roopa is estimating that she will complete her draft effects analysis in late October. At that point I'm thinking we may contact you if we have some significant gaps or issues where we may want to talk to your scientists, or we may feel we have a complete document to submit to you for either informal or formal consultation.

By way of background, the marine copper criteria that Washington adopted has since been published as EPA's criteria recommendation nationally under Section 304(a) of the CWA. It's a change from the NTR value because a larger species database became available from some site-specific studies in New York harbor and San Francisco. The cyanide site-specific criterion was developed by a local consultant and EPA and Ecology were both involved as the studies progressed to make sure that the protocol they followed would meet EPA requirements for site-specific criteria.

As the document progresses I'll give you an update on when we may be submitting it to you. Give me a call if you want to talk about how we approach this. Rachel, do I recall you had already started talking to your Science Center about these parameters, or am I making that up?!